REPORT OF HONOURABLE E. M. CULLITON, COMMISSIONER

IN THE PUBLIC INQUIRY INTO THE SALE OF SASKATCHEWAN GOVERNMENT INSURANCE PROPERTIES IN REGINA, SASKATCHEWAN

- 6 November 1984 -

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INTRODUCTION:

On July 12, 1984, an Order in Council was issued, dated and denoted as No.815/84, appointing me a Commissioner to inquire into the sale of certain properties once owned by Saskatchewan Government Insurance and to report thereon. That Order in Council, together with other relevant material not in dispute and accepted as common knowledge is here set out as background.

Saskatchewan Government Insurance, a crown corporation, was the owner of Lots 36 to 40, Block 308, Old Plan 33, in the City of Regina, hereinafter referred to as the old Saskatchewan Government Building and Annex. Adjoining this property were four lots owned by Saskatchewan Telecommunications. The corporation was the owner also, of Lots 5 to 11, Block 319, Old Plan 33, in the City of Regina, hereinafter referred to as the Smith Street property. Saskatchewan Government Insurance constructed a new head office at 2260 - 11th Avenue in the City of Regina, and as a result, the old office building and annex became surplus. An advertisement offering that property for sale appeared in the Regina Leader Post on June 1, 1977.

The old Saskatchewan Government Insurance building was designated as provincial heritage property on February 25, 1979. This action was taken by the Minister of Culture and Youth, the member of the Executive Council responsible for the administration of the Heritage Property Act, C-F2.2, RSS 1980. The designation was effected pursuant to Section 55 of the above mentioned statute. Under the terms of the ministerial order, the existing facade and the main floor foyer of the building had to be retained.

Officials of Saskatch[illegible]overnment Insurance made every effort to dispose of the o[illegible]atchewan Government Insurance property in the period from [illegible]e 1977 until the end of

1982. Various studies and appraisals were obtained to ascertain what use or uses the property might serve and what proceeds might be expected from disposal. A number of individuals and real estate agents showed interest from time to time. Offers were received but these were ultimately either withdrawn or rejected. A head office summary of the actions taken with regard to such expressions of interest and offers was filed at the subsequent hearing. Since there has been no criticism of the manner in which such expressions of interest and offers were dealt with by the officials of Saskatchewan Government Insurance, no purpose will be served in relating them in detail. Moreover, what may have transpired during that period has no direct relevance to the issues which are the subject of this Inquiry.

THE IMMEDIATE SETTING:

At the beginning of 1983, the Honourable Paul Rousseau was the member of the Executive Council to whom responsibility for Saskatchewan Government Insurance had been assigned. Donald Wayne Black had become President of the Corporation on January 10, 1983. He had as his Treasurer, Larry Fogg who had been in the employ of the insurance corporation since April 1980 and who later became Vice President of Finance. The Director of Finance was William Heidt who had joined Saskatchewan Government Insurance on April 1, 1981 on transfer from the Provincial Auditor's Department. Heidt became Comptroller on March 1, 1983 and Treasurer on October 1, 1983, when that position was relinquished by Fogg. The legal advisor was Ken Lerner, admitted to the Saskatchewan Bar in 1967 and employed since that time by Saskatchewan Government Insurance. While he later became Assistant Vice President Litigation, Lerner's responsibilities were then virtually the same as they were when he was legal advisor. The Manager of Facilities was Dennis Fletcher. He had entered the employ of the Corporation in July 1980

holding the position of Manager of Facilities until replaced by Gary Miller in July 1983. He is presently Supervisor of Space Planning and Technical Services. Gary Miller had been employed by Crown Investments Corporation in May 1980. His position was Manager of the Facilities Department. Miller was a neighbour of Heidt. After some discussion with Heidt, he applied for a position with Saskatchewan Government Insurance. Heidt recommended to the Human Resources Department that he be employed. The recommendation was accepted and Miller entered employment with the corporation as Manager of Facilities on July 19, 1984, replacing Dennis Fletcher. His immediate supervisor was Heidt.

At the time that Donald Black became President - January 1983 - there were no existing offers for the Saskatchewan Government Insurance properties. Black was anxious that there be renewed efforts to sell the properties. He placed responsibility for selling on Fogg and Heidt since the matter fell directly within their areas of responsibility. They, in turn, sought the advice and assistance of Lerner as legal advice was required. The three became the committee responsible for supervising the sale of the properties.

On May 5, 1983 Sydney Lovell, President of Sydco Management Ltd, wrote to the Honourable Paul Rousseau as follows:

> *"While I am sure this does not fall within your day to day function, I thought I might bring this dilemma to your attention.*
>
> *"I have been interested in looking at the possibility of developing the old SGI Annex and possibly creating a restaurant/'night club' facility. I have contacted our mutual friend Chuck Davison who as I am lead to believe has contacted someone several times with no success. It is my opinion that ultimately if you want to develop that building one has to start somewhere and this might be just what it takes to create some interest.*

"I would appreciate you getting back to me as to who I might contact and I am prepared to work with anyone in that department in the possible further development of that building. Thank you once again.

"Sincerely ....."

On July 4, 1983, Lovell was advised in a letter from the Minister's executive assistant, that his letter of May 5 had been forwarded to Black. Subsequently Lovell received a telephone call from Fogg and arrangements were made to examine the building. On July 13, he went to Fogg's office on the 17th floor of the new building, accompanied by Terry Bulych. Arrangements were made for Dennis Fletcher to show them through the building. Lovell and Bulych met Heidt at this time. Lovell was primarily interested in the annex for the possible development as a restaurant. Bulych and Lovell toured the annex and those portions of the old building which they desired to see. After completing the tour of the old office building and annex, they saw Fogg who gave Lovell a copy of the IKOY report, a document which contained the study as to possible uses for the building.

On August 2, 1983, on the stationery of Fossil Fuel Development Ltd, Lovell wrote to Fogg as follows:

"I hope this letter finds you well rested after your vacation. I want to take this opportunity also to thank you for your efforts and the efforts of your staff in showing me the 'Old SGI Building'. After the careful inspection I acknowledged that the annex would not be of interest to us and that it would be in your best interest to demolish that building and perhaps build a surface elevator and double staircase along that west wall and gutting most of the building to make way for prime commercial space. Some of the report which is enclosed I disagree with **but** *far be it for me to judge this seemingly complete report by top-notch professionals.*

"Should there be people interested in some type of

development I hope that you might remember me and perhaps put them in touch with me.

"Sincerely, "

Shortly thereafter, Mr. George Cohen of Calgary, a friend of Lovell's, came to Regina to inspect some properties. Lovell told him that the annex could be converted into a restaurant facility and advised him of the conditions he had encountered when he inspected the building. Cohen toured the building. He later requested a copy of the material which had been given to Lovell in July. This was forwarded to him by Fogg. Subsequently, Cohen wrote to Saskatchewan Government Insurance to state that he had no present interest in the purchase of the old building and annex.

In 1982, Mark L. Silver showed interest in the purchase of the old office building and annex. He contacted Ken Grosse who at the time was Executive Director of Administration and whose duties included the responsibility of selling the corporation property. Silver expressed his interest in the purchase but the negotiations were short-lived as a mutually satisfactory price range could not be agreed upon. Negotiations were then terminated.

Silver's interest in the property was revived in early August 1983. He had ascertained that the property had been designated a provincial heritage property. On interviewing the heritage people, he was advised that primary funding would be available to an amount of $100,000.00 over five years. According to the records of the heritage people, the person to contact at Saskatchewan Government Insurance respecting the sale of the property was Dennis Fletcher. Silver interviewed Fletcher and toured the building with him. He inquired of Fletcher whom he should see respecting the sale of the building and was told to see Fogg. After a number of further examinations of the building, Silver arranged with Gary

Drummond, a lawyer, to assist him in negotiating the purchase. Drummond arranged a meeting with Fogg which took place about the middle of September 1983. On September 23, 1983, Silver on behalf of Mark L. Silver Holdings Ltd, submitted to Saskatchewan Government Insurance an offer to purchase the old office building and annex and the lots adjacent thereto which were owned by Saskatchewan Telecommunications. Negotiations were carried on but the sale was not consummated as no agreement was arrived at as to the price. Further, no agreement was reached with Saskatchewan Telecommunications to obtain the lots it owned.

Silver then took a different approach. He decided that it was inadvisable at that time to pursue the attempt to obtain the Saskatchewan Telecommunications lots through a swap with Saskatchewan Government Insurance for the Smith Street lots. He concluded it was better to obtain an option on the old office building and the Smith Street lots and to pursue on his own, any further negotiations with Saskatchewan Telecommunications. After considerable negotiations, Silver again on behalf of Mark Silver Holdings Ltd, submitted an option agreement prepared by a solicitor covering both the Smith Street property and the old office building and annex. This option agreement was accepted by Saskatchewan Government Insurance on October 17, 1983.

Under the terms of this agreement, Mark Silver Holdings Ltd was granted an option to purchase both properties for the sum of $1,425,000.00. This total was made up of $575,000.00 for the old office building and annex and $850,000.00 for the Smith Street property. The consideration for the option was the sum of $25,000.00 paid the day the agreement was completed. As Lerner had no trust account in which to hold money on behalf of Saskatchewan Government Insurance, the Corporation retained Peter Whitmore as its solicitor in the transaction and that payment was made to him. The agreement

provided that if the option were not exercised as therein provided, this sum would be retained by Saskatchewan Government Insurance but if exercised, would apply on the purchase price.

It was set out that the option would expire at 12 o'clock noon on January 20, 1984 if it were not exercised on or before that time and date. If the option were exercised on both properties as provided in the agreement, the credit of $25,000.00 paid for the option would be applied to the purchase price while the balance of $1,400,000.00 would be paid as follows:

(a) $100,000.00 on the date of the exercise of the option; and

(b) $1,300,000.00 within thirty days of the exercise of the option or if exercised on January 20, 1984, not later than February 15, 1984 and in any event not later than that date.

The option agreement further provided that Mark Silver Holdings Ltd could exercise its option only in respect to the old office building and annex by payment of $575,000.00 as follows:

(a) by application of the $25,000.00 on the purchase price;

(b) $100,000.00 on the date of the exercise of the option; and

(c) the balance of $450,000.00 within thirty days of the exercise of the option or if exercised on January 20, 1984, not later than February 15, 1984 and in any event not later than that date.

It is to be noted that under the option agreement, Mark Silver Holdings Ltd could exercise its option to purchase both properties or only the office building and annex but could not purchase the Smith Street property alone.

Some time in early October, Bulych discussed with Les Mironuck the possibility of making an offer for the old office building and annex. At that time Bulych thought Lovell had lost interest in the old Saskatchewan Government Insurance building.

He had heard rumours that a figure in the neighbourhood of $500,000.00 was now being considered for that property hence he contacted Miller and made arrangements for him and Mironuck to tour the building. Bulych thought he and Mironuck toured the building on two occasions and believed it was once with Miller and the second time with someone else.

In a letter dated October 20, 1983 addressed to Saskatchewan Government Insurance for the attention of Miller, Bulych made an offer to purchase the old office building and annex. The letter, on the letterhead of Teras Consulting Ltd, contained that offer as follows:

"Re: Old S.G.I. Office Building - 2215 Eleventh Avenue

"Further to our recent discussions, the following is an outline of our proposal to S.G.I. for the purchase of the office building on Eleventh Avenue. After taking both the cost of renovations and the ability to market the space at a competitive price into consideration, we would be prepared to offer $600,000 for the property in question subject to the following conditions:

1. Payment of $100,000 within 90 days of accepted offer.
2. An additional payment of $300,000 upon completion of renovations.
3. An agreement for payment of final $200,000 over 5 year term at current interest rates.
4. Title to be transferred to ourselves with a first position maintained by S.G.I. for the amount owed.
5. Postponement of position in favour of financing company.
6. A lease commitment by S.G.I. or any other government agency for a period of 5 years plus 5 years for the amount of $15.00 per sq.ft triple net, occupying two of the 5 upper floors.

"We believe $15.00 per sq.ft. to be slightly below the average cost of first class office space within the immediate core. The above proposal has been cautiously approached and we feel is a realistic formula, one that will work for both economic and political benefits for S.G.I. and warrants serious consideration by yourselves.

"We will call your office on Wednesday, October 26, 1983, to further discuss this offer. If there are any questions in the interm, please do not hesitate to contact my office.

"Sincerely, "

To the foregoing letter, Miller replied as follows:

"Pursuant to our recent conversation and your letter of October 20, 1983, we would like to take this opportunity to thank you for your proposal submission for the purchase of the Old Head Office Building. As discussed, SGI have currently executed an option for purchase with another party. If for some reason this option lapses, or the purchaser does not follow through with his offer to purchase, then we will be in touch at our earliest opportunity.

"I trust the above is satisfactory, however, if you should have any further questions, please do not hesitate to contact the undersigned.

"Yours truly, "

When Mark Silver Holdings Ltd obtained the option to purchase October 17, 1983, it had been agreed that during the term of the option the company could do minor demolition and repair the windows. If the option were not exercised, the company would not be compensated for such work or improvements. The minor demolition and improvements were supervised for Saskatchewan Government Insurance by Miller.

On January 20, 1984, Mark Silver Holdings Ltd exercised its option to purchase the old office building and annex. Payments were made to the solicitor for Saskatchewan Government Insurance in accordance with the terms of the option agreement. As the option on the Smith Street property was not exercised, it lapsed that day.

In late October 1983 Silver read in the Leader Post an advertisement by Supply and Services calling for tenders for a court house. He discussed this matter with Gary Drummond who advised him to see an architect. He saw Clive Rodham, an architect, and the two agreed, after investigation, that the old office building did not lend itself to renovations as a court house. Drummond then advised Silver that Rodham was anxious to submit a

proposai for the court house. Silver felt that if this were to be done. it would be necessary to obtain a developer and to acquire the necessary land.

Silver interested Park Avenue Developers in participating in the tender for the court house. A new company named Smith Corporate Development was structured and submitted a tender for the court house. The participants in that company and their interests were as follows:

Park Avenue Developers	40%
Mark Silver Holdings Ltd	15%
Gary Drummond	15%
Clive Rodham	15%
Bill Woodward	15%

When Mark Silver Holdings Ltd exercised its option on January 20, 1984, no word had been received from the Department of Supply and Services respecting the tender.

At this time, Silver concluded that the option on the Smith Street property should be secured as a site for the court house if the tender were accepted. Therefore, Silver and Drummond a day or two after January 20, interviewed Heidt and Lerner to obtain an extension of the option on the Smith Street property. Heidt and Lerner verbally agreed to do so. Such extension was formalized in a new option by agreement dated February 10, 1984. The option was to expire on February 20, 1984 and apart from the new expiry date, the terms of purchase of the Smith Street property were the same as those set out in the option agreement of October 17, 1983.

Mark Silver Holdings Ltd duly exercised its rights under the option agreement of February 10, 1984 and complied with all of the required terms of the agreement. At that time, Smith Corporate Development was aware that its tender for the court house had been accepted. By agreement between Mark Silver Holdings Ltd

and Smith Corporate Development, title to the Smith Street property upon which the court house was to be built, was transferred to Smith Corporate Development.

In the meantime, Miller had left the employ of Saskatchewan Government Insurance. He was offered a position by Silver in Mark Silver Holdings Ltd. He eventually accepted this offer and gave the necessary notice to Saskatchewan Government Insurance that he would terminate his employment on January 31, 1984. As he had holiday time to his credit, he actually ceased work on January 20, 1984. While nominally on the payroll of Saskatchewan Government Insurance until January 31, 1984, he was free to go to Mark Silver Holdings Ltd as he had no duties to perform or responsibility to Saskatchewan Government Insurance after January 20. He joined Mark Silver Holdings Ltd that day.

THE INQUIRY ESTABLISHED:

I am satisfied the foregoing narrative sets out correctly all pertinent facts relative to the sale of the Saskatchewan Government Insurance properties from the time these became surplus in 1977 until their final disposition. While none of the facts which I have relied upon are in dispute, it is against this background that the sale became a matter of controversy in the Legislative Assembly during the spring session of 1984.

The sale of the Saskatchewan Government Insurance properties first came up in the Legislature on April 2, 1984. Mr. Shillington, a member of the Opposition, asked the Honourable Paul Rousseau two questions. He asked him to put on the record the final sale price of the old office building and annex and to indicate whether the sale negotiations for Saskatchewan Government Insurance were handled by Gary Miller. The Minister replied that

the final sale price was $575,000.00 and that he would take notice of the second question although he believed the sale negotiations were handled by the appropriate vice president of the Corporation.

On April 9, 1984, Shillington asked the Minister what role Gary Miller had played in the negotiations. The Minister replied that Miller was not involved in the negotiations but did assist by showing the building and annex and answering questions on building specifications. In answer to another question, the Minister said the three officials who participated in the negotiations were Fogg, Heidt and Lerner. He also agreed it would be the responsibility of the Facilities Manager (Gary Miller) to relay to those with the authority to negotiate the sale, any written or oral offer, or any figure that a prospective purchaser might have mentioned as a figure at which he would be willing to begin negotiations.

On April 6, 1984, Syd Lovell as secretary-treasurer of Fossil Fuel Development Ltd, wrote the following letter to the Honourable Paul Rousseau:

> *"I was not surprised to recently hear that the old SGI building had been sold. As you can appreciate, I was disappointed that my group could not be the ones to have been the fortunate new owners.*
>
> *"In conversation with Larry Fogg I expressed our real interest and he was kind enough to have passed me on to Gary Miller who I was told was more familiar with the project. After a short meeting we were taken by Mr. Miller on a tour of the annex as well as the main building and throughout our viewing my attention was directed to the shortcomings of this building and I recall remarking 'you might never sell this property with this attitude'. I suggested that we would only be interested if SGI might accept an offer in the area of $750,000. Mr. Miller then informed me that this most probably would not be acceptable since others were seriously looking into this purchase and that because all offers were to be directed to Mr. Miller*

personally I was lead to believe our offer would be low.

"I contacted Mr. George Cohen, another member of our group in Calgary, and told him of our findings and he said he would maintain some sort of contact with SGI.

"I was surprised to most recently discover that the building and annex were sold for under $600,000 to Silver Developments Ltd., one of the firms negotiating at the same time we were. I was not as surprised, however, to hear that Mr. Miller is now Vice President, Real Estate, with that same company.

"It is dealings like this which cause me great concern and while I am sure you are aware of all these facts, you can appreciate this concern. This would not discourage me from looking at other similar projects but few can compare to this type of important central location with the heritage and potential.

"Sincerely, "

During the session on April 11, Shillington asked the Minister the following question: *"Will the Minister confirm that the individual ---- will the Minister confirm that the individual who received the expression of interest for $750,000 and who received the letter for the offer of $600,000 was one Gary Miller and that Gary Miller was the person who responded to the offer and that Gary Miller is the same person who, on the day the property was sold, on the day of the announcement of the sale of the property to Silver Developments, announced his resignation from Saskatchewan Government Insurance and went to work for Silver Developments --- will you confirm this?"*

To this, the Minister replied: *"Certainly I will confirm that."* The Minister qualified that answer to some extent by saying that he (Miller) showed the building at the request of the officials. He said the offer in writing was made to the officials and not to Miller and that the same was rejected by the officials. At this session, Shillington tabled a copy of Lovell's letter to the Minister of April 6, 1984.

At the sitting of the Legislature on April 18, the Minister was again questioned by Shillington. The Minister tabled

the letter of Lovell's dated August 2, 1983 which related to the visit made by Lovell and Bulych on July 13. He went on to say the offer of $750,000 was for the building including the annex, made orally and withdrawn by the letter of August 2.

On April 10, 1984, Lovell wrote a further letter to the Minister. In that letter he stated that when he and Bulych toured the building in late September and early October, Bulych was there as a potential partner. He said Bulych was to provide the expertise in the assessment of the building. He further said that Bulych in making the $600,000 offer in late October was on his own. On April 13, there were two letters written to the Minister by Lovell in one of which he expressed his concern as follows:

> *"I had the pleasure of watching the question period today and I am now aware that it was you who provided my letter of August 2nd, 1983 to the Press. I am also surprised to find that with access to all of the files, together with Mr. Fogg's 'ear' and the power of your good office, and I would presume the knowledge that August comes before September or October, you would know that my letter of August 2nd, 1983 referred to my interest in purchasing the Annex alone. It was in this regard that I reviewed the Engineer's Report and wrote the letter of August 2nd.*
>
> *"Evidently, you have lost sight of the important issue I asked you to look into and are fighting some sort of political battle with the opposition. My stand on joint ventures or partnership is obvious, and the Teras Consulting Ltd. offer which you referred to was made independent of me and your allegation that I was a partner of Mr. Bulych at that time is simply not factual. In that regard I enclose a letter that I have received from Mr. Bulych.*
>
> *"Once more, I respectfully request that you deal with the issues, not only as the Minister in charge but as my M.L.A. I have asked whether or not I had a fair chance to buy the building and whether or not my offer was considered and as well, whether or not Saskatchewan Government Insurance received as much for the property as they could or should have. The other concern of course, is whether or not there was an independent choice of purchasers made by those officers at Saskatchewan Government Insurance when the Silver Developments offer was accepted.*
>
> *"Yours truly, "*

During the question period on April 18, the Honourable Allan Blakeney asked the Minister a number of questions. The pertinent portion of the exchange is as follows:

HON. MR. BLAKENEY: - My simple supplementary to the minister is this: have you investigated to find out whether Miller reported this expression of interest at a figure of $750,000 to his superior, Fogg, whose obligation it was to secure that price if he could?

HON. MR. ROUSSEAU: - Well, if I recall correctly, that was in the correspondence. The correspondence which I'm referring to management indicates the amount of $750,000 -- the letter that I received from Mr. Lovell. And management gets copies of this. I send it on to them. So certainly it was looked into.

HON. MR. BLAKENEY: - Mr. Speaker, I am asking the minister whether he has investigated to find out whether Miller reported this expression of interest -- if he doesn't like the word offer -- of $750,000 to his superior, or whether he withheld that information from his superior. That is the question I ask you: have you investigated this? Have you ascertained what happened?

HON. MR. ROUSSEAU: - Mr. Speaker, I think what the member is asking me was, I believe, the question simply put: was management aware of the expressed desire or interest in the amount of $750,000 at that time? Was management aware of it? And my answer is yes.

During the question period on April 25, the Honourable Paul Rousseau made the following statement:

HON. MR. ROUSSEAU: - Thank you, Mr. Speaker. Mr. Speaker, I'd like to clarify statements made by me in this House concerning an alleged offer by Mr. Syd Lovell or his companies ... (inaudible interjections) ... I would hope, Mr. Speaker, that the members opposite will listen very closely ... By Mr. Syd Lovell or his companies for the purchase of the SGI old head office building or the annex thereto.

I had been assured, Mr. Speaker, by management that they were confident that all the offers and expression of interest had been passed on to them. Now, when I made these statements, I was acting on the assumption, as apparently was the Leader of the Opposition and the member for Regina Centre, that the events detailed in Mr. Lovell's correspondence, copies of which I understand are also in the hands of the members opposite, were entirely accurate in respect of Mr. Lovell's discussions with Mr. Gary Miller and Mr. Lovell's alleged verbal $750,000 expression of interest.

And during the term ... or the time the property was on the market, there were several offers and expressions of interest, Mr. Speaker, and I have a list of them. I'm prepared to make it available to the members opposite. However, I have now been advised by my officials of SGI, that they have contacted Mr. Miller, and he emphatically denies ever showing the SGI old head office building, or the annex thereto, to Mr. Lovell, or having any discussions or meetings with, or receiving any offers from Mr. Lovell on the old head office building, or the annex thereto.

My officials at SGI confirm the building, including the annex, was shown to Mr. Lovell and his colleague, Mr. Bulych, and they confirm that the showing was on the morning of Wednesday, July 13, 1983, by the then manager of the facilities department ... (inaudible interjections) ... I would ask the members to listen carefully on this. It's important that you listen because you should know what it's all about.

However, Mr. Speaker, the manager of that department at that time was not Gary Miller, whose employment with SGI had not yet commenced. SGI management has concluded an investigation of the circumstances surrounding the sale of the old SGI head office building, and the subsequent allegations of conflicts of interest levelled by the opposition. The results of management investigation are contained in memos from SGI management members to the president of SGI, and forwarded to me with a covering memorandum, all of which I will now table, Mr. Speaker.

The following day, Shillington tabled two affidavits, one by Lovell and the other by Bulych. In his affidavit, Bulych swore that he and Lovell toured the building and annex on two occasions: the first on July 13 with Dennis Fletcher, and the second sometime in September, with Gary Miller. On the second occasion, he swore that Lovell expressed to Gary Miller an interest in purchasing for the sum of $750,000. Bulych further swore that Miller left a clear impression that such an offer would be lower than what Saskatchewan Government Insurance expected. The affidavit was sworn on April 25 before R. G. Gates of the firm of Herle and Gates, solicitors for Lovell.

Lovell's affidavit was also sworn before Gates the same day. He simply swore that he had read Bulych's affidavit and that

he had personal knowledge of the pertinent facts attested to and that they were true.

On May 2, the Honourable Mr. Blakeney renewed his application for further investigation of all of the circumstances relevant to the sale. In doing so, he said:

> *Mr. Speaker, I would like to renew my question. I'd like to ask a new question to the minister in charge. Obviously the information on the file is not going to reveal wrongdoing in a total sense. Obviously not. If it had revealed wrongdoing, obviously, I believe, the minister would surely have acted.*
>
> *What I am asking is: if it reveals a conflict, if it reveals a conflict with other evidence obtained elsewhere, affidavit evidence which is filed by well-known businessmen, can that information be -- all of it -- sent to the RCMP or whoever is the appropriate authority, to be investigated? Because that is where we are, Mr. Minister. We have your story, you say supported by your file; we have two affidavits of citizens who dispute your story. Surely you will agree, Mr. Minister, that there ought to be a further investigation of those clear conflicts of testimony.*

The Minister offered to make all his files available to the Opposition for examination. There was one limitation, namely that it contained some information that could not be made public. The Opposition refused this offer with that caveat and pressed for a full investigation and inquiry. In the meantime, on May 10, Miller completed a solemn declaration in which he declared that at no time during his employment by Saskatchewan Government Insurance during the months of August, September, October, November and December 1983 did he show the office building to Lovell or discuss the building with him.

Because of the admissions made by the Minister in the Legislature that Miller had accompanied Lovell and Bulych on a tour of the office building and annex -- that Lovell had in the course of that tour expressed to Miller an interest in the building of

$750,000.00 -- that management was aware of that expression of interest and had considered the same, all of which admissions were withdrawn by the Minister on April 25 for the reasons stated in the Legislature that day; and because of the conflict between the declaration of Miller and the affidavits of Lovell and Bulych, the Opposition contended that in the absence of some satisfactory explanation of this confused situation, there would be a public perception of improprieties and conflicts of interest in the sale of the properties. In these circumstances, the Opposition requested that there be a public inquiry into all facts and circumstances relating to the sale of the properties in order that both the Legislature and the public be informed whether there did exist conflict of interest or a failure by the Government or Saskatchewan Government Insurance Corporation to protect the public interest in such sale. The Government at first refused to accede to this request as it felt no such inquiry was necessary.

The Opposition continued to press its request for a public inquiry. The issue between the Opposition and the Government was complicated by the legal action taken by Gary Miller and Silver Developments Ltd against Syd Lovell, Fossil Fuel Development Ltd and Mr. Shillington. The statement of claim was issued out of Queen's Bench in the Judicial Centre of Regina on April 19, 1984. In that action, the firm of Wilson, Drummond, Findlay and Neufeld were the solicitors on record for the plaintiffs.

In the action, the plaintiffs alleged they had been defamed by the defendants and claimed damages as follows:

for the Plaintiff Gary Miller: a) Judgment against the Defendants Lovell and Fossil Fuel and Shillington jointly and severally for general damages in a sum not less than $250,000.00;

b) Judgment against the said Defendants jointly and severally for special damages;

c) Judgment against the said Defendants jointly and severally for punitive or exemplary damages in a sum not less than $100,000.00;

d) The costs of and incidental to this action.

for the Plaintiff Silver Developments Ltd: a) Judgment against the Defendants Lovell and Fossil Fuel and Shillington jointly and severally for general damages in a sum not less than $1,350,000.00;

b) Judgment against the Defendants jointly and severally for special damages;

c) Judgment against the Defendants jointly and severally for punitive or exemplary damages in a sum not less than $250,000.00;

d) The costs of and incidental to this action.

Controversy arose in the Legislature respecting the legality of the action against Shillington who claimed that such action contravened the privilege he enjoyed as a member of the Legislature. This controversy resulted in an interruption of the proceedings of the Legislafure. The whole controversy was brought to an end temporarily by two factors, namely: the discontinuance of the action against Shillington, and the decision of the Government to institute a public inquiry.

By Order in Council 815/84, the Lieutenant Governor in Council appointed me a Commissioner, pursuant to the provisions of the Public Inquiries Act, R.S.S.1978 C-P 38, and sole Commissioner of a Commission of Review of the sale of certain properties once owned by Saskatchewan Government Insurance. Under the terms of the said Order in Council, my responsibility was to inquire into and report on:

(1) all aspects of the selling by Saskatchewan Government Insurance of its property at 2215 - 11th Avenue, and its properties in the 1800 block on Smith Street, in the City of Regina, from the time these properties first became available for sale until their actual sale, to determine whether the employees and officials of Saskatchewan Government Insurance, responsible for the selling of the properties, carried out their responsibilities in an appropriate manner;

(2) whether the actual sales of the properties were on appropriate terms, having regard to all the relevant circumstances, including the interests of the Taxpayers of Saskatchewan and any other offers, if any, that may have been made; and

(3) whether the sales of the properties were properly conducted by Saskatchewan Government Insurance, and its employees and officials, including whether there was any improper conflict of interest on the part of any official or employee of Saskatchewan Government Insurance or the Government of the Province.

The Order in Council authorized me to engage such staff as I thought necessary to carry out the obligations of my Commission. In such selection, I had a completely free hand and was fortunate in obtaining the services of the following:

(1) Mr. E. R. Gritzfeld, Q.C., Past President of the Law Society of Saskatchewan, as counsel;

(2) Dr. John H. Archer, retired President of the University of Regina, as secretary and research officer; and

(3) Miss Frances Prince as secretary to Dr. Archer and myself.

During the controversy in the Legislature, no charge was made that any member of the Government or any officer or employee of Saskatchewan Government Insurance was guilty of wrongdoing. There was no accuser and no accused. The discharge of the responsibilities placed upon me by the terms of reference required me to inquire into all facts and circumstances relating to the sale of the old office building and annex and the Smith Street property. Thus the investigative work, necessary to determine the witnesses to be called and the documents to be produced at the public inquiry so that all matters relating to such sales would be disclosed, rested with me and my associates in the Commission.

As a first step, the Honourable Paul Rousseau made available all his files and any other file in his possession relating to the sale of the properties. The President and officials of Saskatchewan Government Insurance also provided the Commission with all files, documents and memoranda that had any relevance to the sale of these properties.

In order that there would be no subsequent problem or criticism as to the procedure adopted by myself as Commissioner, I discussed the proposed procedure with representatives of the Government and with the Honourable Allan Blakeney and Mr. Shillington of the Opposition. I advised them that Dr. Archer and I would review the files delivered to the Commission. From that review we would determine the names of all persons in any way involved in the sale proceedings and all documents bearing in any way on such sale proceedings. When the list of persons involved had been completed, Dr. Archer was to interview them all as potential witnesses. He was to make a summary of the evidence each such witness would probably give at the public hearing and the involvement of that witness as disclosed in the files. After such interviews were completed, Dr. Archer was to deliver the completed summaries to Mr. E. R. Gritzfeld, Q.C., the Commission counsel.

After reviewing and studying the reports and summaries received by him from Dr. Archer, Mr. Gritzfeld would finally determine the witnesses to be called. He was to interview each witness as to the evidence to be given and to advise each witness that he or she had the right to have counsel at the hearing. Both the Opposition and the Government were advised that the Commission would call any witness they thought might assist in the Inquiry. There were no requests for witnesses as a result of that undertaking.

Both the representatives of the Opposition and of the Government agreed with the proposed procedure. The Commission then carried out its investigative requirements. While I was acquainted with the files, I did not interview any witnesses nor receive any of the summaries of evidence made by counsel.

Before the public hearing, Mr. Gritzfeld, Dr. Archer and I met with counsel who were to appear for the various witnesses. They were:

(1) L. H. Kyle, Q.C., who was to represent Saskatchewan Government Insurance, its employees and the Honourable Paul Rousseau;

(2) G. L. Gerrand, Q.C., who was to represent Gary Miller, Mark Silver and Gary Drummond; and

(3) Wm Herle, who was to represent Sydney Lovell.

The only witnesses who stated they were not to be represented by counsel were Terry Bulych and A. Hosie.

At this meeting counsel were advised as to the witnesses to be called. Agreement was arrived at as to which witnesses would be cross-examined by the respective counsel, subject to the right of any counsel to make application to extend that right if unforeseen circumstances should arise during the hearing to justify such application.

The public hearing was held on September 24 and 25, 1984. It was conducted in accordance with this agreed procedure. All the proposed witnesses to whom I have referred, testified and no problems or difficulties arose in respect to examination and cross-examination.

THE COURSE OF THE INQUIRY:

A careful review of the evidence adduced at the public hearing satisfies me that the factual statements I have set out are in accordance with and supported by that evidence. That evidence also establishes a number of other matters about which there is no dispute.

As already stated, there was no individual or corporation actively interested in the purchase of the old head office building in early 1983. This was so notwithstanding the interest that had

been shown from time to time prior to that date by individuals and real estate agents, and the offers that had been refused or withdrawn. The officials of Saskatchewan Government Insurance, having considered the studies made respecting possible use or uses of the old office building decided that the best policy was to continue efforts to sell the property. It was agreed further that the property should be sold by the Corporation and not through a real estate agent.

There were valid reasons for making this decision. The officials of Saskatchewan Government Insurance were very anxious to dispose of the old office building as expeditiously as possible as the annual maintenace cost of approximately $100,000.00 a year was a dead loss. As well, these officials recognized that two factors had a very detrimental effect both on the saleability and the value of the property, namely its designation as a provincial heritage property and the lack of actual or potential parking facilities.

It was about March 1, 1983 that the committee of Fogg and Heidt, shortly thereafter to include Lerner, assumed the task of accepting and reviewing offers that might be made for the purchase of the property. The responsibility of this committee was to analyze and study offers made, and to recommend acceptance or rejection to Black, the President. Were an offer to be recommended for acceptance, and were it to receive Black's approval, the matter must then go to the Executive Committee of the Board. The committee of three also decided as a matter of policy, that no asking price would be established and that price would not, in the first stage, be a matter of discussion with potential buyers. When a potential purchaser showed interest, he was to be asked to submit a written offer. While the committee undoubtedly established for its own purpose, a minimum price for the property, such price was never disclosed to anyone, nor was it divulged at the public hearing. The policy so adopted by the committee had the approval of the President.

Both Dennis Fletcher and his successor, Gary Miller, were aware of the policy adopted by the committee. Both testified that, in showing the building to interested parties, they were aware that there was to be no suggestion of an asking price - parties were to be requested to submit offers. Miller testified that he called a meeting of his staff and advised them of this policy.

It was also decided that while it was advisable to sell the Smith Street property if the office building were sold, such property would not be sold unless sold in conjunction with the old office building or after that building was disposed of.

In the evidence adduced at the public hearing, the same conflicts appeared as had surfaced in the Legislature. There it had been suggested that one might infer conflicts of interest existed - or that the Government and Saskatchewan Government Insurance officials had failed to properly protect the interest of Saskatchewan taxpayers. Whether or not the evidence supports or justifies such suggestions or conclusions depends upon the credence to be accorded to the evidence in which such conflicts occur. The area in which there were direct conflicts of evidence is extremely narrow.

After the completion of the sale of the property to Silver Developments Ltd, I am sure both Saskatchewan Government Insurance officials and Government members felt that problems relating to this sale were now behind them. Such was not to be the case. The letter written by Lovell to the Honourable Paul Rousseau on April 6, 1984 resulted in the sale becoming the subject of discussion and review in the Legislature. I have already quoted that letter. It is to be noted that in it, Lovell states he had conversations with Fogg and expressed their real interest in the old office building. He did not state when these conversations took

place. He went on to say that Fogg passed him on to Miller who took them on a tour of the annex and the building. The evidence is that the reference to "their" and "they" in the letter is to Lovell and Bulych.

Lovell said he suggested to Miller they would only be interested if Saskatchewan Government Insurance might accept an offer in the area of $750,000.00. He said Miller informed him that such an offer probably would not be acceptable since others were seriously looking into the purchase. He went on to say that as all offers were to be directed to Miller personally, he was led to believe their offer would be low. Lovell in his letter said he was surprised the old office building and annex were sold to Silver Developments Ltd but not so surprised to hear that Miller was now Vice President, Real Estate, of that company. It is to be noted that Lovell said he contacted George Cohen, another member of their group in Calgary, and told him of their findings and said he would maintain some sort of contact with Saskatchewan Government Insurance.

It is this letter of April 6, 1984 which gave rise to the allegations that Miller, when in the employ of Saskatchewan Government Insurance, may have been protecting Silver's interest by failing to advise his superior of Lovell's interest of $750,000.00, and that his failure to do so resulted in a sale at a figure substantially below that which might have been received.

On April 13, 1984 Lovell wrote two letters to the Honourable Paul Rousseau. In one of these letters, which I have already quoted, Lovell stated his letter of August 2, 1983 referred only to his interest in the annex. He concluded his letter by setting out the problems which concerned him as a result of the sale. In a letter dated April 10, 1984 Lovell referred to a

meeting he and Bulych had had with Saskatchewan Government Insurance officials in late September or early October. He did not name the officials with whom he met on that occasion. This was the first time in correspondence with the Minister that he made any mention of a second tour of the old office building and annex.

Shillington, on April 26, 1984 tabled in the Legislature two affidavits, one by Bulych and the other by Lovell. Bulych in his affidavit swore that he and Lovell toured the annex and part of the old office building in July 1984. He also swore that some time in September 1983, he and Bulych met Fogg and Heidt who arranged with Miller to show them the building. Bulych swore as to his recollection of the conversations between Lovell and Miller and said Lovell had expressed an interest at $750,000.00, and that Miller was discouraging in his comments.

Lovell in his affidavit merely swore that the facts of which he was aware as set out in Bulych's affidavit were true. On May 10, 1984 the Honourable Paul Rousseau tabled a declaration by Miller in which he solemnly delcared that he had never shown the old building and annex to Lovell nor had he ever discussed the building with him.

At the public hearing, Lovell testified he had contacted Fogg on both occasions that he visited the old office building, first in July 1983 and again in September 1983. He also said Heidt was present on both occasions.

Fogg testified that after having received the direction from the President to contact Lovell, he did so by telephone and arranged for Lovell to meet him at his office on July 13, 1983. He said Lovell arrived with Bulych and met both him and Heidt. While not sure how Fletcher was contacted at that time, it was common

ground that it was Fletcher who guided Lovell and Bulych through the annex and part of the main building that day. Fogg said Lovell must have returned to his office after the tour as he gave him that day, a copy of the IKOY report. Fogg swore he never again saw either Lovell or Bulych.

Heidt said in evidence he had been called to Fogg's office and was there when Lovell and Bulych arrived on July 13, 1983. He agreed that it was Fletcher who conducted the two men on a tour of the property that day. He also swore that he never again saw either Lovell or Bulych.

There is no conflict of evidence respecting the tour of the annex and the old office building on July 13, 1983. The evidence is clear that the meeting with Lovell and Bulych was arranged by Fogg after receiving instructions from the President. The President's participation arose as a result of the Honourable Paul Rousseau forwarding to him Lovell's letter of May 5, 1983. Such is not the case respecting a tour of this property which Lovell and Bulych swore occurred in early September 1983, in accordance with arrangements made with Fogg who directed Miller to be their conducting official. As already stated, Fogg and Heidt both said in evidence they had never seen Lovell or Bulych after the meeting of July 13, 1983. Miller swore he had never conducted Lovell through the building or discussed the property with him at any time.

It is evident that in order to give validity to allegations of impropriety or negligent action, it must be established that what Lovell alleges prior to and during the September 1983 tour is correct. The resolution of this conflicting testimony is basic to the disposition of the questions posed in the terms of reference, and it requires careful review of the relevant evidence.

The first contention by Lovell that he and Bulych had toured the old office building and annex a second time was set out in his letter of April 10, 1984 to the Honourable Paul Rousseau. In that letter he did not state a date. Bulych, in his affidavit tabled in the Legislature on April 26, 1984, swore that Lovell and he met Fogg sometime in September 1983 and that the latter arranged for Miller to show them through the premises. In his testimony Bulych said the arrangements for that meeting were made by Lovell and he believed Heidt was there as well. He went on in his affidavit to narrate what he could recall of the conversation between Lovell and Miller during that tour.

Lovell in his affidavit tabled in the Legislature the same day, merely swore that what Bulych had said in his affidavit was true. When giving evidence at the hearing, he said that he and Bulych had toured the building on two occasions and in each case before so doing, they had met with Fogg and Heidt. The date of the second occasion according to Bulych was probably September 2, 1983.

It is difficult for me to understand why the burden was cast upon Bulych to establish what happened on the alleged second visit to the building. According to Bulych's testimony, arrangements for that tour were made by Lovell. Further, Lovell was the one interested in the possible purchase of the building and he, Bulych, was along only as an advisor respecting renovations. It was Lovell who carried on the conversation with the person who conducted them through the premises. In these circumstances, it would be normal and natural for Lovell to have sworn to the pertinent facts of which he had the particular knowledge. Any affidavit by Bulych would be in corroboration of Lovell's evidence. This is the first time in my experience that an individual has attempted to establish facts which were particularly within his knowledge by

merely swearing the affidavit corroborating such fact were true. Why this was done, I do not know. It certainly adds nothing to the probative value of the affidavits.

The only evidence which supports the contention of Lovell is the statements made in the Legislature by the Hnourable Paul Rousseau during the question periods, before he made his correction on April 25. I have already quoted the pertinent statements made by the Honourable Paul Rousseau and his correction of April 25. The question is: Does the evidence support and justify his correction?

It is to be noted that in his letter of April 6, 1984 Lovell referred to only a single meeting. In that letter, he said he suggested to Miller that they would only be interested if Saskatchewan Government Insurance might accept an offer in the area of $750,000.00. At this time there was no suggestion that this occurred on a second tour of the old office building. The officials of Saskatchewan Government Insurance testified they were aware of the tour on July 13, 1983 but of no other. It is only natural it should be assumed by such officials that Lovell's letter of April 6, 1984 referred to that first meeting.

It is apparent that the Minister assumed statements made by Lovell in his letter of April 6, 1984 were true. It is equally apparent that he assumed any obligations that may have been placed on Saskatchewan Government Insurance officials as a result of such statements had been considered and disposed of by those officials. It is evident that the answers to the questions posed to him by the Opposition were based on these assumptions.

In his letter of April 10, 1984, Lovell referred to two meetings. It is not clear when this letter was serviced by

Saskatchewan Government Insurance officials through the usual channels. It is evident, however, that as late as April 18, 1984 the Honourable Paul Rousseau still believed that in his letter of April 6, 1984, Lovell was referring to what occurred on July 13, 1983. This is made clear by the fact that the Honourable Mr. Rousseau that day filed Lovell's letter of August 2, 1983 in which Lovell said the annex would be of no interest to them, as an answer to the allegations made in the Legislature.

When the officials of Saskatchewan Government Insurance became aware of Lovell's claim that he and Bulych made a second tour in September 1983, they made the Honourable Mr. Rousseau aware of what they said were the true facts. On April 25 when the Honourable Mr. Rousseau explained the reasons for his answers which were in error, he advised the Legislature of the true situation as explained to him by his officials. He was satisfied that the situation was as explained by his officials.

While it is regrettable that the conflicting statements were made by the Honourable Mr. Rousseau, such error is understandable. I am satisfied he did not intend to mislead the Legislature but he based his erroneous answers on the assumptions which he subsequently found to be incorrect. He corrected the errors arising from such answers as soon as he was advised of the true circumstances as disclosed by his officials. That action was proper and such as was required of the circumstances. I have no hesitation in accepting the Minister's evidence.

I now turn to the conflict in evidence by Fogg, Heidt and Miller and that of Lovell and Bulych. Fogg and Heidt are chartered accountants. They entered government service in 1974; Fogg in the Department of Finance and Heidt in the office of the Provincial Auditor. In 1980 Fogg transferred to Saskatchewan Govern-

ment Insurance followed in 1981 by Heidt. Their profession requires honesty and integrity. Their profession also is founded on precision and accuracy. It is common ground that Lovell and Bulych saw Fogg and Heidt on July 13, 1983; that they came to Fogg's office following a telephone call to Lovell by Fogg. That call originated as a result of a memorandum from the President. It was to Fogg that Lovell addressed his letter of August 2, 1983. It is difficult for me to believe that in these circumstances, had Lovell made a second call on him, Fogg would not have recalled it.

In giving their testimony, both Fogg and Heidt gave direct and concise answers. They were in no way shaken in cross-examination. Their demeanour conveyed both confidence and truth.

Bulych in his testimony was unable to be specific in a number of instances. He did not recall with certainty some of the incidents that were alleged to have occured on that occasion. Lovell, too, was speculative in his evidence. His demeanour was such that his evidence did not carry that certainty which would require its acceptance.

Miller also gave evidence in a clear-cut and convincing manner. There was no hesitation or quibbling in answering questions. He withstood a long and piercing examination without difficulty.

I accept the evidence of Fogg and Heidt that they did not meet with Lovell and Bulych any time after July 13. I also accept the evidence of Miller that he never at any time interviewed Lovell or accompanied him on a tour of the old office building and annex. Having reached that conclusion, I must conclude that both Lovell and Bulych were mistaken in their contention that they met Fogg and Heidt in September 1984 and that they were escorted by Miller at that time.

In addition to resolving the conflict of evidence respecting the alleged September tour by Lovell and Bulych, I think it is only fair that I consider Lovell's contention from another angle. Clearly the very basis upon which the suggestion of impropriety rests is the contention by Lovell that he made a bona fide offer, or expression of interest, during a tour of the old office building and annex in September which it was incumbent upon the officer who accompanied him to convey to this superior. I therefore pose this question: If it be assumed without so finding, that Lovell and Bulych made the tour in September 1983 with someone other than Miller and assuming, again without so finding, that his evidence of what he said to the conducting officer was true, can it be said that the evidence establishes a bona fide offer, or an expression of interest, that the conducting officer was duty-bound to report to his superior?

In his affidavit of April 25, tabled in the Legislature on April 26, referring to the conversation Lovell had with the conducting officer on the September tour, Bulych deposed as follows:

> *".... THAT in discussing the value of the property, an earlier sale which was not completed was discussed and as I recall, the selling price of the earlier sale referred to herein was approximately 1.3 million dollars.*
>
> *"THAT, GARY MILLER suggested that there were other interested parties although no specific offer had been made.*
>
> *"THAT after we had toured the said building, SYD LOVELL expressed an interest in purchasing same to GARY MILLER, for the sum of $750,000.00. GARY MILLER left a clear impression that such an offer would be lower than what Saskatchewan Government Insurance expected ....."*

At the hearing Bulych testified respecting that conversation both from his recollection and in explanation of what he had said in his affidavit. His testimony in this respect is as follows:

> *Q I see. All right. Was anything said, then, about price, with the SGI rep that was there with you?*

A Well, yeah, as I recall, there was a mention of the fact that Mr. Lovell ... As far as the vein of the conversation, you know, it was light conversation, but I believe 750,000 was mentioned.

Q Now, you said 'light conversation'. Did I hear that correctly?

A Right.

Q What do you mean by that? It might mean different things to different people.

A Well, I mean, you know, you weren't at the bargaining table. You know, we were going through the building, touring it, discussing it, and basically feeling out the potential value of the building.

Q I see. And did he say, 'I'll give you $750,000', or specifically how did that figure get into the conversation?

A Well, I don't recall, you know, the direct, I guess, wording that might have been used there, but they probably, knowing Mr. Lovell, would have been somewhere, you know, 'We would be prepared to offer,' you know, '750,000', or in that particular vein.

Q Now, you remember swearing an affidavit, I think, Mr. Bulych, on April the 25th, 1984. You remember swearing that affidavit?

A Yes, I do.

Q And that is before this Commission, and, in paragraph 10, you say this: ' ... that after we had toured the building, Syd Lovell expressed an interest in purchasing same to Gary Miller, for the sum of $750,000' where you phrased, in a very specific way, 'expressed an interest'. What did you mean by 'expressed an interest'?

A Well, expressing an interest is, in fact, what it says.

Q You're not saying that he made an offer to buy it for $750,000, then. Do I read that correctly?

A Well, I'm suggesting that the figure was mentioned, and, as far as what vein one is to take that particular dialogue, you know, what one considers to be an offer, may be one would not. You know, I'm not ....

Q Do I take it, then from you said in your affidavit, that you didn't take it as having been a firm offer to purchase the building of $750,000?

A Well, I don't think the discussion regarding the amount of the building continued to a point of, you know, either way from the seller or the purchaser, to get into details on a $750,000 purchase.

Q No, Mr. Bulych, the question was: from the way you've expressed it your affidavit, you didn't, Gary (sic) Bulych did not assume that an offer was made by Mr. Lovell, from the conversation that you overheard.

A Now, you're asking me whether I believe that an offer was made?

Q Yeah.

A Well, again, I would . . . If it's a question being, did I understand that $750,000 value to be expressed, I would have to say yes. Whether or not that can be construed as a legitimate offer, I don't know. I don't think it's in my position to reply whether that, in fact, is an offer or it isn't.

Q No, I'm not asking you to reply as to whether it is an offer or not. I'm just asking you, or saying to you: you didn't assume it was an offer.

A I didn't assume it was an offer?

Q No.

A Sure it was an offer.

Lovell also gave evidence as to the statement in Bulych's affidavit and the conversation he had with the conducting officer in September. Part of the evidence in respect to the statement in Bulych's affidavit reads:

Q I see, I think you've read the affidavit of Mr. Bulych, have you not, Mr. Lovell?

A I have, yes.

Q And to which you added your seal of approbation by virtue of an affidavit in which you said that what he swore to was correct?

A That I knew about, the portion that I had.

Q And that the way he put it was that you expressed an interest in purchasing for the sum of $750,000.00?

A Okay, I'll accept that.

The pertinent reference of Lovell to the conversation with the conducting officer is disclosed in the following questions and answers:

Q All right. And did you have any further discussion of any kind?

A Well, I did mention to him, with the attitude that he had, he would have difficulty in selling the property and I did offer what I believed to be our highest and what we could not go beyond, providing the -- keeping in mind that the property could be repaired for a reasonable amount of money, which would have been one of the conditions of sale. And I remember offering $750,000.00 and him suggesting that higher offers had been turned down, and that they would be looking for more than 750,000, at which point I said that's all I'm prepared to offer. At that point, I must say, I lost any interest I might have had, and we left the building.

Q What do you mean, you lost interest when what happened?

A Well, the offer I had made was as high as I could go given the information I had, and we left -- we then left the building.

I think it is obvious that Bulych did not think any conversation Lovell had with the conducting officer was a serious expression of interest that required a follow-up. His own conduct is the best evidence of this. According to Bulych's testimoney and that of Lovell, in the alleged tour in September, Bulych was only an advisor respecting renovation. Yet, after that tour, Lovell did not ask him for an opinion - as a matter of fact, he had no contact with him at all. On the other hand, Bulych never contacted Lovell -- never inquired whether he had any continuing interest -- whether he wanted any information. Less than two months after the alleged visit, Bulych made an independent offer of $600,000.00.

He made that offer without advising Lovell. In evidence, he said he thought Lovell had lost interest. As he had not seen or spoken to Lovell since the alleged September visit prior to making the offer of October 20, 1983 he must have come to that conclusion from what transpired during the suggested tour. That would not be strange because Lovell himself stated he had lost

interest at that time. Had Bulych believed there was a bona fide offer or serious expression of interest in the figure of $750,000 by Lovell, I do not think he would have made the offer that he did -- at least he would not have done so without advising Lovell.

As well, I find Lovell's conduct and evidence difficult to reconcile with his submission that during the alleged tour in September he made an expression of interest to purchase at $750,000 that required a follow-up by Saskatchewan Government Insurance.

Lovell, according to his own evidence, is a business man, primarily interested in development activities. He knew from his visit of July 13 that Fogg and Heidt were the key officials involved in the sale of Saskatchewan Government Insurance properties. It was to Fogg he went after the July visit to obtain a copy of the IKOY study. He recognized the position of Fogg, if there was a second visit, by contacting him to arrange the same. He knew, as well, that any serious offer would have to be delivered in writing. It is significant that if Lovell believed he had made an offer, whatever its nature might be, during the alleged September tour, he never followed up that offer. He did not communicate with Fogg or Heidt or with Miller to whom he alleged the offer was made. As a matter of fact, he took no steps whatever until after he learned the property had been sold to the Silver interests. Even then, he made no inquiry from any officials of Saskatchewan Government Insurance but wrote to the Honourable Paul Rousseau. I find it a bit of a problem to conclude why if Lovell did not follow up what he believed to be a bona fide offer, it was incumbent upon Saskatchewan Government officials to do so. I do not think that any person who believed he made an offer that should be considered would wait seven months before making an inquiry as to whether or not it was being considered.

If Lovell were awaiting consideration of his alleged expression of interest, why did he not discuss with Bulych the problems of renovation? He had no subsequent contact with Bulych until after he learned the properties were sold. His own attitude properly explains his conduct. He said that after his discussion with the conducting person, he had lost interest. If the visit had in fact occurred, then I believe that would have been a true statement. Were that his attitude, the conducting officer would also have been aware of it.

I find it difficult to reconcile Lovell's statement that to obtain the building for $750,000 was a steal but he was not prepared to go higher. That is scarcely the attitude of one who is seriously bargaining or negotiating for the purchase of property. It is also significant that although Lovell swore he saw Fogg on three occasions: twice on July 13, once in September - and Heidt on two occasions, he could not identify either of them at the hearing.

On all of the evidence, I am satisfied that if the figure of $750,000 was mentioned, it was neither the basis of an offer to purchase nor a serious offer to begin negotiations at that figure. It it were a figure, as Bulych testified, "said in light conversation", it was not intended as a basis upon which to pursue negotiations.

Thus, on the basis of the assumptions I have made, nothing transpired in the alleged conversation between Lovell and the conducting official, that could be construed as a bona fide offer to purchase, or a serious offer to begin negotiating at $750,000.00. Lovell could not have entertained any intention to continue bargaining, as he said to acquire the property at that price would be a steal but he was not prepared to go higher. He said, as well, he lost interest in the matter when he left the

building in September. Accepting that statement to be true clearly indicates he had no intention of pursuing negotiations. I must therefore conclude that even if the evidence of Lovell and Bulych that they toured the building in September is assumed to be true, nothing transpired according to that evidence that would establish either a bona fide offer to purchase or a bona fide intention to further negotiate.

It was suggested that Gary Miller in the course of his activities, had contravened the directive governing conflict of interest. That directive as set out by Saskatchewan Government Insurance is as follows:

> *Employees are not permitted to engage in any outside business or financial activity, either directly or indirectly, which conflicts with the interest of the Corporation or which interferes with the employee's ability to discharge Corporate duties. Employees involved in purchasing decisions or their immediate families are not allowed to have a personal financial interest in suppliers of property, goods or services. Employees must not accept gifts, benefits or unusual hospitality from actual or potential suppliers.*

Before entering government service, Miller worked for six years with an engineering development firm. His areas of expertise were property management, developments, real estate and general construction activities. He held a diploma in civil engineering from the Saskatchewan Technical Institute in Moose Jaw. He had taken some administrative training at the university level and had taken a correspondence course in real property administration.

In May 1982 he took a position with Crown Investment Corporation as manager of facilities, more commonly understood

as management of properties. Just prior to accepting that position he was looking after properties for Citation Development Ltd.

He was a neighbour of William Heidt. From time to time, they discussed problems Heidt was having with the old Saskatchewan Government Insurance office building. On one occasion, Miller advised Heidt respecting the proposed installation of new heating boilers. He suggested a means by which costs could be saved. Heidt asked him if he were interested in seeking employment with Saskatchewan Government Insurance.

At the time, Miller's principal responsibility with Crown Investment Corporation was looking after the old telephone building at the corner of Albert Street and College Avenue. As this building was being sold to another department of the government, Miller felt that his job was petering out. Being somewhat discouraged as to the future, he advised Heidt he would like to make a change. He applied for a position with Saskatchewan Government Insurance through Heidt. Heidt forwarded the application to the Human Resources Department of the corporation with his recommendation. In so doing, he had the approval of his superior, Larry Fogg. Miller's application was accepted and he went to work for the corporation on July 19, 1983. He became manager of facilities, replacing Dennis Fletcher who then became Supervisor of Space Planning and Technical Services. Miller's immediate superior was Heidt.

In his new position, Miller had many properties in addition to the old office building, under his purview. He was aware that Saskatchewan Government Insurance was attempting to sell that building as he had been over it once in 1979 or 1980 with Art Fennell of Citation Development Ltd.

At a meeting in Heidt's office some time in August 1983, Heidt said it would be nice to sell the old office building. Upon inquiring whether Saskatchewan Government Insurance was serious in wanting to sell the property, he was advised that this was so. This prompted him to get some information. He did receive a document entitled "Old Head Office Disposition Summary" which was a chronological summary regarding all actions relating to the possible sale or disposition of the old office building from July 1, 1977 to April 6, 1983. On August 29, 1983 he sought and obtained a copy of the IKOY report.

There was a very loose policy as to who might show the old office building to an interested party. It might be the janitor - the head caretaker - the commissionaire - or any available employee.

Miller first met Mark Silver in Heidt's office very briefly some time in September 1983. He was asked one or two questions about the building which he answered. He then learned that Silver was interested in the building. A little later, he was asked by Heidt to review the files and particularly the appraisals to try to determine the value of the Smith Street property and of the old office building and annex based upon a consensus of the values stated in the various appraisals. This he did and in a letter to Fogg dated September 21, 1983 he gave the following figures as the values from a consensus of the appraisals:

Smith Street	$ 984,375.00
Old Office Building and Annex	$ 812,560.00

Later, Miller was asked for an up-date and in his letter of October 6, 1983 advised Heidt that the values set forth in his letter of September 21 were still valid. On November 7, 1983 in a note to Heidt, he asked for a copy of the Silver option agreement

and sale transaction documents so that he might be aware of Saskatchewan Government Insurance's contractual obligations thereunder. A copy of the option agreement was sent to him.

Under the option agreement, Silver Developments Ltd were entitled to do some minor demolition and repair and change some windows. This work was supervised by Miller during which time he was associated with and became acquainted with Silver. After the option agreement had been completed, he was instructed to co-operate with Silver as those involved in the sale were anxious to complete the sale.

It was at a social event, sponsored by Silver, on November 17, 1983 that Miller first became aware that Silver was interested in him. It was in December 1983 that Silver made an offer of employment to Miller which Miller did not accept. Silver suggested Miller draw up an employment agreement and this he had done by a solicitor. Shoetly after Christmas 1983, Miller told Heidt that Silver was considering an offer of employment to him and that he would advise him of the result of this offer in due course.

The employment agreement between Miller and Silver was signed on January 3, 1984. Under that agreement, Miller was to commence his employment on February 1, 1984. At that time, Miller gave Saskatchewan Government Insurance formal notice of the termination of his employment effective January 31, 1984. As Miller was entitled to holiday leave, he could legally cease work on January 20, 1984 although nominally on the employment roll of Saskatchewan Government Insurance until the end of the month. During the period January 20 to 31, he was under no obligation to render service to Saskatchewan Government Insurance and could properly commence his employment with Silver Developments Ltd that day. The fact that he commenced work for his new employer on the day the option to purchase the old office building and annex was exercised has no significance and was purely coincidental.

Miller had recommended to Silver that he engage Arnott MacPhail Associates Ltd as architects. He did so. A series of meetings and telephone discussions took place between these architects and officials of the City of Regina Building Department respecting the various building codes applicable to the renovation of the old office building. At a meeting on January 20, 1984 Miller attended on behalf of Silver. He advised Saskatchewan Government Insurance officials he would do so and there was no opposition. These meetings and discussions were in no way related to the actual purchase of the building by the Silver interests.

Fogg, Heidt and Lerner all testified that Miller had no input in their decision to recommend to the President and to the Executive Committee the acceptance of Silver's exercise of his option to purchase the old office building and annex and the Smith Street property as set out in the respective options. As already pointed out, Miller's involvement in the sale transaction was simply to provide information respecting the building and to provide what he determined to be the value of both properties based upon an analysis of the appraisals which had been obtained. This he did and it is not without significance that such consensus values were in each case higher than those contained in the options which became the basis of the sales. He had also contacted those who had previously shown some interest in the properties to ascertain whether they still had such interest.

In summary, the facts are simply these: There is no suggestion of anything improper in the manner in which Miller was employed by Saskatchewan Government Insurance. At that time, he did not know and had never met Silver. Upon being employed, he first met Silver casually in Heidt's office some time in September 1983. He had nothing whatever to do with the option agreements. He did not know the contents of the agreement of October 17 until he received a copy of the same pursuant to his request of November 30, 1983.

Only after the completion of the option agreement respecting the old office building did he really become acquainted with Silver.

Silver stated he became interested in Miller because of his ability and industry. These qualifications he felt would make him a valuable employee in his development and promotional activities. This led to his offer of employment. Miller considered that offer as he said he never intended to remain permanently in government service; that he entered government service to learn how that service operated as such knowledge would be most beneficial in dealing with governments when he returned to private industry. He negotiated the terms of his employment and accepted such employment not for immediate gain but because he believed that employment provided greater opportunities for the future.

I have quoted the directive relating to conflict of interest. There is not even a suggestion in the evidence that Miller did anything during his term of employment to further the interests of Silver. Nor is there any suggestion in the evidence that he did anything at any time that contravened his obligation and duty to Saskatchewan Government Insurance. His decision to accept Silver's offer of employment came at a time when negotiations between Silver and Saskatchewan Government Insurance had been completed and set out in the option agreement of October 1983. In short, there is just no foundation in the evidence of any impropriety or conflict of interest in the activities of Miller while employed by Saskatchewan Government Insurance.

In order that this aspect of the Inquiry may be complete, I must say there was no evidence upon which the conduct of either Drummond or Peter Whitmore can be questioned. Drummond's participation took place after he ceased being secretary of Saskatchewan Government Insurance and he in no way used his past association to

benefit Silver. Peter Whitmore was not concerned with the negotiations, his interest being only to act as solicitor in making legally effective the decision made by the officials of Saskatchewan Government Insurance.

During the hearing there were made public the various appraisals which had been obtained for the old office building and annex. There was made public as well, the figures at which the property was sold. Naturally there were variations in the different appraisals. I accept as correct the consensus of values of that property disclosed by such appraisals at the time the consensus figure was determined by Miller. Then, in order to have an up-to-date appraisal of the property, I asked Arthur H. Hosie, a well-qualified, experienced and highly respected appraiser of Regina, to make an appraisal of the building as of January 20, 1984. In asking him to do this, I made available to him all appraisals which had been previously obtained by Saskatchewan Government Insurance. At the hearing, he gave evidence and filed a copy of his appraisal report. In making his appraisal, Hosie said:

> *"Several relevant documents concerning the property have been made available to me including architectural and engineering reports, appraisal reports prepared by qualified independent appraisers, the option agreement setting forth the terms of sale and other documents relating to the feasability of renovating the building.*
>
> *"The documents have been analyzed.*
>
> *"My approach has been to give considerable attention to two factors which bear heavily upon the property value, namely the Provincial Heritage Designation of a portion of the property and the highly speculative nature of the economics of the property rehabilitation."*

In the course of that report, he pointed out that while some benefits might accrue from the heritage designation, there was

no guarantee that a heritage grant would be paid. He then went on to discuss in detail the effect of the heritage designation and the estimated cost of rehabilitation. He pointed out he had to consider the competitive office space available in Regina; the surplus of such space in downtown Regina; and the great disadvantage in the lack of actual or potential parking facilities at the building. All these factors, he went on to say, would have a direct impact not only on rentability of office space but also the rent to be charged therefor.

Based upon a realistic estimate of total annual rental, capitalized at 15%, he arrived at a value of the present building and annex after rehabilitation of $2,343,000.00. From this figure he deducted the cost of rehabilitation, managerial costs and developer's profit totalling $1,700,000.00 and arrived at a value of $643,000.00. He concluded his appraisal by saying:

> *"The valuation estimate obtained of $643,000.00 is directly affected by many estimates of cost and income. Any variance in actual cost, or income bears directly upon the final estimate of value. Therefore a price within the range of ten percent, plus or minus would in my opinion be a reasonable market value of the subject property as at January 20th, 1984.*
>
> *"The best method of valuation, when data is available is by direct comparison. The valuation of heritage properties is a new field where few if any transactions involving comparable properties are to be found."*

ave no hesitation in accepting Hosie's appraisal. In making the same, he took into consideration all factors which must be considered in the circumstances of this case. His appraisal is fair and realistic, one which truly reflects the market value of the old office building at the time of its sale.

It is to be noted that if effect is given to the 10% factor which Hosie states is properly applicable in the determination of a market value, that value would be $578,300.00. As the actual sale price was $575,000.00, no one could reasonably suggest that such a price was not reasonably within the parameters of the appraisals which were made. I am satisfied the sale of that property for $575,000.00 was an appropriate sale, one which fully reflected the market value of the property at the time. I am further convinced that not to have accepted that offer at that time would not have been in the best interests of either Saskatchewan Government Insurance or the public as Saskatchewan Government Insurance was suffering a dead loss of some $100,000.00 a year for maintenance as long as the building was vacant and unsold.

The sale of the Smith Street property causes me no concern. That property was purchased for $492,000.00 and sold for $850,000.00. The figures speak for themselves. Clearly this sale was not only in the interest of the taxpayers of Saskatchewan but also for their benefit. It is to be noted that after the company named "Smith Corporate Developments" was structured, Haibek, representing that company, interviewed the officials of Saskatchewan Government Insurance in an attempt to have the selling price of the Smith Street property reduced. The officials of Saskatchewan Government Insurance quite properly took the position that the corporation had concluded a contract at the price of $850,000.00 and there was no basis upon which any change in that figure would be justified.

CONCLUSION AND FINDINGS:

Before summarizing my conclusions, there are two other matters upon which I should express my opinion. First, there was not a tittle of evidence to suggest the Government, or any of its members or employees were in any way involved in the sale of the two properties. These sales were conducted entirely by Saskatchewan Government Insurance through its responsible officials and employees. Nowhere can it be suggested they were influenced by the Government nor did they at any time extend special consideration to Silver. From the time the properties became available for sale dating back to June 1, 1977 those involved from Saskatchewan Government Insurance in such sales acted in a truly professional way, ever mindful of their personal responsibilities and their responsibilities to Saskatchewan Government Insurance.

Secondly, it is clear that the inferences and allegations made in Lovell's letter to the Minister, the conflict in the declaration of Miller with the affidavits of Lovell and Bulych, and the conflicting statements made by the Minister, required clarification. It is true the Minister did correct his conflicting statements but the opportunity seek further clarification in this area would be restricted by the rules of the Legislature. It is to be noted that wrong-doing or improper conduct was never charged against the Minister or the Government. The Opposition as was their right, requested a public inquiry and the Government, after careful consideration, granted that request. I am sure it did so because it, too, wanted clarification, not so much for itself, but for the benefit of the public. No criticism can be levelled at the Opposition for asking for a public inquiry nor at the Government for granting the same.

I have now reviewed all aspects of the questions posed for my consideration in the terms of reference as set out in the Order in Council establishing the public inquiry. I think in the course of my review, my answers to such questions become apparent. However, for the purposes of brevity and certainty, I summarize those answers as follows:

(1) the evidence adduced at the hearing satisfies me beyond question that from the time the old office building and the Smith Street properties first became available for sale, the employees and officials of Saskatchewan Government Insurance responsible for selling the properties, carried out their responsibilities in an appropriate manner;

(2) that the actual sales of the properties were on appropriate terms and for prices which fully protected the interests of the taxpayer of Saskatchewan and that at the time the sales were concluded, there was no other bona fide offer or prospective offer for consideration by the officials of Saskatchewan Government Insurance apart from that made by Bulych on behalf of Teras Consulting Ltd in his letter of October 20, 1983 and which was made subsequent to the option granted to the Silver interests and which could be considered only if that option was not exercised; and

(3) that such sales of properties were properly conducted by Saskatchewan Government Insurance and its employees and officials and there was no evidence whatever of any improper conflict of interest on the part of any officer or employee of Saskatchewan Government Insurance or the Government of Saskatchewan.

6 November 1984,
Regina, Saskatchewan.

E. M. Culliton,
Commissioner.